

211

October 17, 2001

Docket No. 01-16
Communications Division
Public Information Room
Office of the Comptroller of the Currency
regs.comments@occ.treas.gov

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
comments@fdic.gov

Docket No. R-1112
Ms. Jennifer J. Johnson, Secretary
Federal Reserve Board
Regs.comments@federalreserve.gov

Chief Counsel's Office
Office of Thrift Supervision
Attention Docket No. 2001-49
regs.comments@ots.treas.gov

Dear Community Reinvestment Act (CRA) regulators:

Self-Help (www.self-help.org) appreciates the opportunity to comment on *the joint advance notice of proposed rulemaking on Community Reinvestment Act Regulations* printed in the July 19, 2001 Federal Register.

Introduction

Self-Help is a 20-year old community development financial institution that creates ownership opportunities for low-wealth families through home and small business lending. We have provided \$1.6 billion dollars of financing to help 23,000 low-wealth borrowers buy homes, build businesses and strengthen community resources. Self-Help partners with lenders nationwide on many CRA-related activities, including our secondary market loan program for home loans to low-wealth families and through the CDFI's Bank Enterprise Award (BEA) program.

Self-Help generally agrees with the detailed comments made by the National Community Reinvestment Coalition, Center for Community Change, The Woodstock Institute and the Community Development Venture Capital Association. Self-Help believes that CRA has been a crucial instrument in spurring increased lending and investment in underserved communities. Like the regulatory changes of 1995 that strengthened CRA's positive impact, Self-Help believes that regulators must adjust CRA to the ever-changing financial world to ensure that lending and investment in underserved communities continues to grow in a helpful - not harmful - manner. In particular, it is critical that CRA regulations take into account the explosive growth in subprime lending, which was barely on the radar in 1995.

As a lender that seeks to create ownership opportunities for low-wealth families through home and small business lending, Self-Help has come to realize that it is crucial to rein in predatory lending that strips wealth out of the very communities we seek to help. CRA regulations should be modified to ensure that lenders do not earn lending test credit for making predatory loans and that lenders take responsibility for brokered loans. The regulations should also be modified to mandate affiliate reporting to ensure that all an institution's lending activities are taken into account.

Do No Harm: No CRA Lending Test for Predatory Loans

Self-Help strongly believes regulators should examine loans for predatory features, including excessive up-front fees (3-5 percent total loan amount), prepayment penalties on subprime loans, inclusion of single premium credit insurance or mandatory arbitration clauses. Loans with these features, particularly subprime refinances, are almost always not in the best interest of the

borrower. Lenders should not receive CRA credit for making loans with these characteristics and if the lender makes a significant number of such loans then the lender's CRA rating should be negatively impacted. Similarly, brokers are an increasingly important part of the home lending process, originating over half of all mortgage loans. Their involvement in subprime and, more importantly, predatory loans is even greater. CRA regulations should require lenders to take responsibility for brokered loans in order to earn CRA credit. This would spur lenders to better oversee brokered loans to ensure that they are not predatory (which would hurt the lenders' CRA rating, as described above). Further, the origination or purchase (in the absence of reasonable due diligence) of any loans that violate state or federal lending laws should negatively impact the institution's lending test rating.

Further, *any lender either directly engaged in or facilitating payday or auto title lending should receive no higher than Needs to Improve on the lending test.* Payday and title lending are generally abusive products that strip wealth out of communities. Lenders participating in either of these products should be closely examined to compare the prevalence of their other lending products in communities served by payday and title loans. While payday and title loans are questionable practices, it seems beyond question that they are a poor way to provide access to capital in underserved communities. Lenders choosing to participate in these activities should have their CRA ratings impacted accordingly.

Finally, while subprime lending has value, significant research concludes that too many creditworthy borrowers are receiving over-priced subprime loans. Therefore, it is logical to consider giving prime loans more weight than subprime loans and seeking a way to negatively rate loans that put borrowers in a higher rate loan than for which the borrower qualifies.

Mandate the Examination of Affiliate Activities

The financial world has changed dramatically in recent years. Self-Help believes that regulators should mandate inclusion of all lending and banking activities of non-depository affiliates on CRA exams. This would provide a more accurate view of CRA performance of institutions that are spreading lending activity to all parts of their company, particularly to subprime lending affiliates. Indeed the ten-fold increase in subprime lending over the last decade makes it imperative that CRA exams focus on an institution's subprime activity. Giving an institution the option of excluding affiliates creates a reporting bias in the best case and allows predatory loans to be hidden in the worst case.

Also, as described below, Self-Help believes that any new CRA regulations retain a separate investment test and expand assessment areas to more accurately reflect the activities of today's complex financial institutions.

Retain the Investment Test

The investment test is critical to evaluating an institution's commitment to community development and Self-Help **strongly** believes that it should be retained as a separate test. Investments are crucial to building and increasing the capacity of nonprofits, community development banks, and others that serve the credit needs of those not well served by regulated depositories. As for the concern expressed by some lenders that there are insufficient investment opportunities in their assessment areas, we would contend that this is rarely the case, and that exceptions should not be used to make the rules. Institutions not meriting at least a Low Satisfactory on the investment test should not be able to receive an overall rating of Satisfactory or Outstanding.

Update Assessment Areas

CRA procedures for delineating assessment areas also need updating if CRA is to adequately capture the activities of banks in the rapidly evolving financial marketplace. Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Banks are increasingly using brokers and other non-branch platforms to make loans. Some lenders are essentially doing small business loans through credit cards and Internet loans are now commonplace. As a result, CRA exams do not accurately scrutinize the true assessment area of a lender.

Conclusion

Self-Help believes that regulators dramatically improved the effectiveness of CRA with the 1995 changes. Regulators now have a golden opportunity to update the CRA in a manner that will better capture the comprehensive lending, investment and service activity of rapidly changing financial institutions and in light of an explosive subprime lending market that barely existed in 1995. We appreciate the complexity of this regulatory task and hope our comments are useful as regulators consider proposing specific regulatory adjustments.

Thank you very much for providing the opportunity to comment.

Sincerely,

David Beck
Policy Director
Self-Help
301 W. Main Street
Durham, NC 27701
919 956-4495
davidb@self-help.org